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Progress report submitted by the independent expert on the situation of human rights in the Democratic Republic of the Congo**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré, submitted pursuant to General Assembly resolution 60/170.

* A/62/150.
** This report is being submitted late in order to include the most recent information.

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Progress report submitted by the independent expert on the situation of human rights in the Democratic Republic of the Congo

Summary

The General Assembly decided, by its resolution 60/170, to continue to examine the situation of human rights in the Democratic Republic of the Congo and requested the independent expert on the situation of human rights in the Democratic Republic of the Congo to report to it at its sixty-first session. The mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was extended for one year by decision 1/102 adopted by the Human Rights Council on 30 June 2006.

Based on the information he received during 2007, the independent expert is in a position to make detailed comments on the human rights situation in the Democratic Republic of the Congo. The situation remains worrying, given the poor security conditions and the serious and widespread human rights and other violations and atrocities committed in the eastern part of the country and in northern Katanga, with complete impunity, by militias and armed groups (Front nationaliste intégrationiste (FNI), Union des patriots congolais (UPC), Mai-Mai, Forces démocratiques pour la libération du Rwanda (FDLR), "Rastas", soldiers loyal to the renegade general, Laurent Nkunda) and by the armed forces of the Democratic Republic of the Congo.

This report documents serious human rights violations committed by the armed forces and police in order to draw national and international attention to such egregious violations of human rights and to the poor security conditions prevailing throughout most of the country.

Moreover, regrettably, the justice system is weak and lacks independence since the executive branch controls decisions by the courts.

The independent expert accordingly recommends:

- That the process of disarming militia and armed groups such as the Forces démocratiques pour la libération du Rwanda, the "Rastas", the Mai-Mai and Nkunda's soldiers should be accelerated;
- That public freedoms should be respected in all circumstances;
- That mechanisms should be established to combat impunity;
- That all necessary measures should be taken to protect all human beings in general, and women and children in particular; and that an end should be put to all abuses and violations and all forms of exploitation and widespread sexual violence;
- That an independent judiciary should be promoted with sufficient human and financial resources to ensure the proper administration of justice; and that a special international tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers should be established.

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I. Introduction

1. By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights in the country and to verify that its obligations in that field were being fulfilled.

2. This report is based on information transmitted regularly to the independent expert by the field office of the Office of the High Commissioner for Human Rights in the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of non-governmental organizations and institutions, political parties and associations.

3. The report reflects information received during the last few months of 2006 and up to 30 June 2007.

II. Overview of the human rights situation in the Democratic Republic of the Congo for 2007

4. Reports received from various sources show that the lack of security, serious human rights violations and impunity remain causes of great concern throughout the country and are more prevalent in the eastern part of the country.

5. The armed forces and the police, as well as the growing numbers of privately armed forces in various parts of the country, continue to commit serious human rights violations on a daily basis, including arbitrary arrests, executions, rape, torture and inhuman and degrading treatment.

6. Militarized forces commit abuses, severe human rights violations and attacks on the lives of citizens.

7. The Republican Guard and specialized branches of the police, including Kin-Mazière, the National Intelligence Agency and the former military police branch responsible for unpatriotic activities, continue to operate outside the law with full impunity and to commit serious human rights violations.

8. According to the statistics of the human rights division of MONUC for the first six months of 2007, 86 per cent of human rights violations were committed by the army and police, which raises doubts about the ability and the commitment of the public authorities to ensure peace and security. Other human rights violations include the Buramba (North Kivu) and Kanyola (South Kivu) massacres perpetrated by soldiers of the 2nd battalion of Bravo Brigade and by the Forces démocratiques de libération du Rwanda (FDLR)/"Rastas" in March and May 2007, respectively; 8 per cent of those violations were committed by the National Intelligence Agency and other State intelligence agencies, and 6 per cent by armed groups scattered throughout the country.

9. On 31 January and 1 and 2 February 2007 in Bas-Congo, violent protests by members of the political and religious opposition movement Bundu Dia Kongo were brutally repressed by the armed forces of the Democratic Republic of the Congo and the Congolese national police, which used disproportionate force, killing 105 persons and seriously injuring about 100 others.

10. Serious fighting between troops of the Congolese armed forces loyal to the President and those loyal to Jean-Pierre Bemba, involving the use of heavy weaponry, occurred in Kinshasa from 22 to 25 March 2007. Many observers, including MONUC observers, reported that the clashes were followed by summary executions and dozens of arrests. Political figures should strive to build greater consensus and exercise greater restraint in their dealings.

11. Journalists, who have no protection against serious attacks on their lives, have been easy targets, especially in the wake of the above-mentioned clashes of 22 to 25 March 2007. Dozens of reporters and media personnel were harassed, threatened, intimidated and subjected to arbitrary arrest. Public opinion was shocked by the premeditated murder of a MONUC Radio Okapi journalist on the night of 13 June 2007 in Bukavu, South Kivu province. The independent expert on the situation of human rights in the Democratic Republic of the Congo was interviewed by Radio Okapi about these events.

12. Sexual violence remains an area of considerable concern. Despite the strengthening of legislation to combat sexual violence, it is still being perpetrated with impunity and the resulting trauma affects society as a whole, not just women and girls.

13. The integration policy implemented by the Government under the peace process is giving rise to serious human rights concerns. The policy was initiated at the beginning of the year in North Kivu and has produced brigades made up of former soldiers of the 81st and 83rd Brigades of the former Congolese national army loyal to the renegade general, Laurent Nkunda, and forces loyal to the Government who had previously been based in South Kivu, and it has brought the two Kivu provinces to the brink of military confrontation amid heightened ethnic tension, the disorderly displacement of people fleeing the crimes and widespread punitive actions committed by the integrated brigades and FDLR forces, including massacres, massive plunder, arrests, torture and ill-treatment. Integration has led to many well-known war criminals being absorbed into the army. This has been perceived by many as a reward for impunity and has led to unrest.

14. The international community and those in power in the Democratic Republic of the Congo should give priority attention to the extremely serious situation in the Kivu provinces. The independent expert has received a copy of the interlocutory motion proposed in the National Assembly on 8 May 2007 in Kinshasa by parliamentarians across the political spectrum from North Kivu and South Kivu provinces; following the introduction and submission of the motion, those representatives of the people decided to suspend their participation in the work of the National Assembly. The motion recalls the background to the deterioration in the security situation in the Kivu provinces, the identity of which is now ill-defined as a result of the central government's failure to deal with the seriousness of the situation and control over the region has become difficult. The inhabitants have suffered at the hands of the armed groups, supported and armed by neighbouring countries, and by the unbridled depredations of General Laurent Nkunda, who has placed his men in key positions in the national police force. Areas of North Kivu such as Fatuwa, Kasugho and Bunyatenge, and of South Kivu such as Bijombo and Kataka and many other areas have become states within the State. Those areas are controlled by several foreign forces (Allied Democratic Forces/National Army for the Liberation of Uganda, FDLR, "Rastas") which levy arbitrary taxes and commit acts of violence

against the population. This had led to over 150,000 persons displaced during the reporting period in Rutshuru, Lubero, Masisi and Walikale in North Kivu alone. The occupation forces have carved out new territorial entities, such as the territory of Minembwe, divided into five communities and 22 districts, which are under their complete control. Traditional chiefs have been removed and replaced by other chiefs subservient to the external forces; this consolidates their control over the occupied territories and their resources, and jeopardizes national sovereignty, the State's authority and national and regional stability.

15. The volatile situation in the two Kivu provinces should be one of the main priorities with regard to the Democratic Republic of the Congo. The problem extends well beyond human rights violations and includes the rights of ethnic groups. If a solution is not urgently found, the country, and indeed the entire Great Lakes region, could well slip back into conflict.

16. The difficult situation in the Democratic Republic of the Congo continues to hamper peacebuilding efforts. During the transition period from 2003 to 2004, national reconciliation efforts, which included the activities of the Truth and Reconciliation Commission, established by Organic Law No. 04/18 of 30 July 2004, and the activities of the judiciary, were paralysed by the interests of the former belligerents represented in the transitional Government. Crimes committed between 1996 and 2002 have thus not been investigated. Some war criminals have been able to resurface under the guise of reconciliation and hold important posts in the State administration and the new army. Nevertheless, it has been possible to conduct several investigations which should be continued in order to attain social peace. The complexity of the legal system does not allow for the organization of rigorous and stable judicial proceedings, which would be desirable. These aspects reduce the capacities of the legal system and reveal its current limitations in organizing the proceedings and combating impunity. A glaring example is that of the six persons sentenced on 12 April 2006 for crimes against humanity for the mass rape in Songo Mboyo, Equateur province, who recently evaded justice. Soldiers raped at least 119 women and girls, many of whom were under the age of 18. In view of this impunity, local residents have become desperate and sometimes resort to lynching and other forms of private vengeance.

17. Because of the number of serious violations committed by the police and the armed forces, the independent expert has decided to focus on these kinds of violations in this report in order to bring them to the attention of the authorities and the international community. Priority actions are needed to address the situation, especially with regard to sexual violence committed mainly by the forces of law and order, but also with regard to the disastrous situation in prisons and the conditions of detention.

18. The lack of real progress in combating impunity makes it necessary to establish a special international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts.

III. Massive violations of human rights

A. Crimes and human rights violations committed by the armed forces

19. There is chronic insecurity in the Democratic Republic of the Congo and there continue to be serious human rights violations in the form of sexual violence. Some extremely serious events took place during the period in which this report was being prepared.

1. Crimes committed by soldiers of the armed forces of the Democratic Republic of the Congo

20. Soldiers of the armed forces of the Democratic Republic of the Congo were responsible for a number of arbitrary arrests and other serious human rights violations throughout the country, including violations of the right to life and physical integrity and the right to liberty and security of the person. There are many examples.

21. During the night of 11 to 12 January 2007, over 250 soldiers of the integrated brigades of the Congolese armed forces based in Bunia organized a mutiny and looted and pillaged the town. Five women were raped. The soldiers attacked the civilian population because their commander had allegedly seized part of their end-of-year bonuses.

22. On 6 February 2007, in Matebe, close to the centre of Rutshuru, soldiers of Bravo Brigade killed 13 civilians. On 23 February, in Katwiguru, not far from Rutshuru, soldiers from the headquarters of the 2nd Battalion of Bravo Brigade, under the command of Lieutenant Colonel Innocent Nzamulinda, executed three civilians.

23. Following clashes between soldiers of the Congolese armed forces and the Forces démocratiques de libération du Rwanda (FDLR) on 8 March in Kabuhendo, and following an attempt by FDLR soldiers to ambush the Bravo Brigade headquarters on 9 and 10 March in Buramba, in the territory of Rutshuru, North Kivu, approximately 15 civilians were arbitrarily executed, shot by soldiers of the newly mixed 2nd Bravo Battalion.

24. On 17 April 2007, two soldiers of the Congolese armed forces arrested a pregnant woman in Punia, in Maniema province, on the grounds of an alleged debt. They took her to their camp and beat her until she aborted as a result of this cruel treatment.

25. On 27 April in Pabong, in the Ituri district, two soldiers of the 2nd Battalion of the 1st Integrated Brigade of the Congolese armed forces based in Nioka forced a man into a vehicle and accelerated so hard that the man was thrown out of the vehicle and his left leg was fractured. The soldiers then proceeded to beat him until local residents came to his aid.

26. On 29 April 2007, five soldiers of the "mixed" Charlie Brigade shot four civilians in the village of Rubaya, in north-west Goma.

27. A series of rapes were committed by soldiers of the 2nd Integrated Brigade of the Congolese armed forces based in Vuyinga, west of Butembo. On 1 April 2007, a minor girl was raped by a soldier of the 23rd Battalion in Butembo, on 4 April an

18-year-old girl was raped in her home, and on 5 April a 13-year old girl was raped next to a well.

28. On 1 May 2007, in Kingalasa, Bas-Congo province, a 12-year-old girl and a 13-year-old girl were raped by a soldier of the Défense-Baki Battalion of the Congolese armed forces.

29. In Mahagi, Ituri, a soldier of the Congolese armed forces belonging to the Department of Border Security forced a man to rent him his house and raped his 16-year-old daughter several times; she was found to be pregnant in June 2007.

30. On 2 May 2007, a corporal of the 6th Integrated Brigade arbitrarily executed a male nurse in Songomoya, on the edge of Lake Albert.

31. On 10 May 2007, in Minembwe, South Kivu, three soldiers of the 122nd Battalion of the 12th Integrated Brigade of the Congolese armed forces executed a farmer who tried to stop them stealing his property.

32. On 15 May 2007, soldiers of the 6th Integrated Brigade of the Congolese armed forces based in Jiba (Ituri), raped four women, looted houses and forced local residents to transport their spoils. During the previous month, soldiers from the same brigade had committed 14 rapes in the same region.

33. On 27 May 2007, a man was beaten to death and another was seriously wounded by soldiers of the 23rd Battalion of the 2nd Integrated Brigade of the Congolese armed forces based in Bulambo-Isale, south-east of Beni.

34. On the night of 26 to 27 May 2007, the FDLR "Rasta" faction carried out several massacres in the villages of Nyalubuze, Muhungu and Chihamba in Kanyola, South Kivu province, during which 17 women and children were massacred with machetes, axes and sticks and 23 civilians were wounded, abducted and led into the Mugaba forest. The assailants left behind a letter explaining that their actions were a response to the combined military operations of the Congolese armed forces and MONUC carried out against them.

35. On 17 May, five civilians who were accused of collaborating with FDLR were executed by soldiers of the 2nd Battalion of the "mixed" Bravo Brigade of the Congolese armed forces in Rudehe, North Kivu.

36. On 19 June 2007, three persons were killed in a church in Nyabyshwa in North Kivu by soldiers of the 3rd Battalion of Charlie Brigade. Two days later, in Mikeno, soldiers of the same battalion assassinated two other persons whom they accused of complicity with FDLR.

37. During the night of 27 to 28 June 2007, two civilians were slaughtered in the Commune of Kadatu, Bukavu, by four armed men belonging to the Congolese armed forces, who broke into the victims' residences for purposes of extortion and to steal their belongings. When the victims resisted, the assailants killed them. The following day, local residents identified one of the assailants and beat him to death. The second assailant was found and burned alive.

2. Crimes committed by Congolese national police officers

38. Congolese national police officers were responsible for several cases of human rights violations, including executions, rapes, cruel, inhuman and degrading treatment, arbitrary arrests and illegal detentions.

39. From 28 to 30 December 2006, police officers from Businga, Inera and Bobadi who had supposedly come to reinforce the Congolese national police force in Karawa, north-west of Gemena in Equateur province, arrested 67 local villagers and subjected 50 of them to cruel treatment. Thirty women were raped. Almost all the houses were looted in retaliation for the fact that on 27 December 2006 police officers in Karawa had come to the assistance of a man who had killed a sector head, whereas the local residents wanted to lynch him. In response, local residents destroyed the police station, dragged the suspect from his cell and burned him alive.

40. On 6 January 2007, in Lufuko, south of Kikwit, a minor girl was raped by a police officer while she was being held in custody in Feshi police station. Following her release, the victim's relatives went to the police station to file a complaint. When three police officers, including the perpetrator of the crime, went to the victim's house, there was an altercation between the officers and the family and the mother was killed.

41. On 11 January 2007, in the province of Kasai Occidental, a group of nine police officers arbitrarily arrested four persons and subjected them to cruel and degrading treatment. Two men were tied up with their daughters all night in a holding cell and one of them was forced to urinate naked in front of his daughter. The other man was stripped naked and flogged because he did not have the money to pay for his release. One of the women was raped by the police station commander. All four were released on 12 January, after having paid a ransom.

42. On 27 April 2007, in the commune of Disasi, a 12-year-old girl was raped by a police officer from Bandundu.

43. On 23 April 2007, in Bandundu, a man died as a result of the injuries caused by the blows and cruel treatment administered by several police officers from the Louange police substation, south of Kikwit.

44. On 4 May 2007, a police commander raped a female detainee in the holding cell of the Kajiba police substation in Kasai Occidental.

45. On 8 May 2007, in Ebico, Bandundu, a very young girl on her way to school was raped by a police officer from the Bandundu mobile battalion.

46. On 17 May 2007, a civilian was beaten to death by officers from the Kitulu police station in North Kivu.

47. On 21 May 2007, a woman from Lodja in Kasai Oriental died as a result of the beating she had received from a police officer who had snatched her handbag in the road.

48. Police officers have also been responsible for arbitrary arrests. They arrest people even when they know they are not guilty of offences or crimes and hold them until the alleged perpetrators are identified. The detainees are not informed of their rights or of the charges against them. They are only informed that they will remain in prison until their relatives, who are wanted by the police, are arrested.

49. From 6 to 11 May 2007, a man was arrested and detained at the Kalemie police substation instead of his friend and held until his friend was found or until he paid a large sum of money. He finally paid the money because of the cruel and degrading treatment. During the same period, in Pungwe, south-west of Kalemie, four men

were arrested and detained by seven police officers until they paid 1,500 Congolese francs for their release.

50. On 18 June 2005, the police fired into the crowd at Gemena, in Equateur province, killing a 13-year-old boy and wounding an 11-year-old child. The crowd was protesting at the killing of a man by unidentified armed men. The police officer was arrested and tried by a military court, which sentenced him to death and ordered him to pay $10,000 to the victim's family.

3. Crimes committed by the Forces démocratiques de libération du Rwanda

51. On 15 May 2007, FDLR soldiers attacked a lorry near Kisharo, north of Goma, shooting a passer-by dead and fatally wounding a passenger. On the same day, they attacked another lorry, looted it and killed two passengers.

52. In the morning of 19 May 2007, in Kiseguru, in the territory of Rutshuru, armed men belonging to FDLR opened fire on a lorry carrying several passengers. Over 20 persons were seriously wounded, three were killed instantly and two others, including a woman, later died as a result of their injuries. A second lorry was looted and set on fire.

53. On the night of 22 May 2007, FDLR soldiers killed the Chief of Police of Nyabanira, in northern Rutshuru. That same night, they attacked the Congolese police substation in Kisharu, in northern Rutshuru, and the residence of the police commissioner, releasing the prisoners and stealing five weapons.

54. On the night of 1 to 2 June 2007, FDLR soldiers attacked, looted and pillaged the village of Kakunda, west of Bukavu. They abducted four persons and the body of one of them was later found by villagers. On the night of 3 to 4 June 2007, in the same locality, FDLR soldiers killed a man and abducted seven women, after having looted the village and taken everything. On 23 June 2007, the same armed forces killed an elderly man and looted and set on fire over 30 houses in Bunyereza, north of Shinda.

4. Enforced disappearances as a result of acts perpetrated by the Forces démocratiques de libération du Rwanda

55. The appearance of Bravo Brigade in the Binza district, in the territory of Rutshuru in North Kivu province, has also had a negative effect. Since February 2007, the Human Rights Division of MONUC has been able to document the kidnappings of four civilians, all Hutus, by FDLR soldiers.

56. A prominent 32-year-old Hutu from the locality of Kiseguru was kidnapped by FDLR soldiers from the village of Kiseguru on Friday, 10 February 2007. He was reportedly accused by the FDLR soldiers of collaborating with soldiers of the Bravo Brigade.

57. On 16 February, an ethnic Hutu[1] shopkeeper, approximately 35 years old, living in Katwiguru was tied up and kidnapped from his house by FDLR soldiers. His body was never found, although local residents reported finding traces of blood. According to local residents, the FDLR soldiers had accused him of collaborating with Bravo Brigade soldiers.

[1] His mother was reportedly Tutsi.

58. The head of the locality of Buramba, an ethnic Hutu, was kidnapped from his house on the night of 2 to 3 March 2007. All the informants contacted by the Human Rights Division of MONUC believe that FDLR soldiers were responsible for this kidnapping. The victim has not yet been found.

5. Other armed forces involved in human rights violations

59. On the nights of 31 March to 1 April and 1 April to 2 April 2007, combatants said to be Rwandan Hutus attacked the village of Kanyola in South Kivu province. During the attacks a 2-year-old child was killed, a young girl was burned, four persons were seriously injured, and nine adults and six minor children were kidnapped.

60. On 10 April 2006, in South Kivu, a woman was kidnapped from her home in Miramade by combatants described as Rwandan Hutus and held until 30 December 2006. She was taken along with other girls and women to a military camp in Kalonge forest north-west of Bukavu. According to the account she gave after managing to escape from the camp nine months later, the combatants apparently picked girls or women every day and raped them in turn, repeatedly and collectively.

61. On 5 May 2007, a man was executed by Virunga National Park guards in North Kivu for poaching while on his own property.

62. On 15 May 2007, 15 agents of the National Intelligence Agency and six soldiers of the 672nd Brigade of the Congolese armed forces attacked the village of Kadimbu in Katanga Province, subjecting the villagers to torture and cruel and degrading treatment. The villagers were forced to undress, their feet and hands were tied, and they were beaten and tortured. Five women were raped by the soldiers. The village was thoroughly looted. In this particular case, the military prosecutor, two agents of the National Intelligence Agency and four police officers were arrested and prosecuted for crimes against humanity, rape and looting.

63. On 20 May 2007, a 70-year-old Gambian national died from torture and beatings inflicted on him following his arrest on 12 May by border officials of the Department of Migration in Gamena, Equateur province.

64. On 22 May 2007, Allied Democratic Forces/National Army for the Liberation of Uganda (ADF/NALU) (Ugandan rebels) kidnapped four men and two women from their fields in Bovata, North Kivu province, and took them to an unknown destination, after relieving them of all their possessions.

65. On 10 June 2007, in Mwema, north of Kasango, a man was prosecuted, along with his wife, for having killed a chimpanzee. The man was tortured, forced to undress and subjected to humiliating and degrading acts.

66. The preceding analysis shows that crimes on a grand scale have been committed by the various parties mentioned. It should be mentioned, however, that sexual violence plays a special role in these violations, a fact that calls for additional study.

B. Sexual violence

67. Other cases of sexual violence have occurred in addition to the above-mentioned acts of sexual violence attributed to the armed forces. Sexual violence

occurs frequently in the Democratic Republic of the Congo. Many people who are arrested and imprisoned for sexual violence regain their freedom either by escaping, with the complicity of prison guards, or because of clemency on the part of the judicial authorities who impose lenient sentences that serve as an incentive for recidivism. In several areas, arrangements, deals or resolutions acceptable to the families are reached and victims are often threatened. All of this promotes a climate of impunity.

68. On 31 December 2006, in Kpandroma, two girls from Aru, including a minor, were raped.

69. From 28 December 2006 to 1 January 2007, in Bandundu province, three police officers kidnapped and held a 13-year-old girl in the Malebo district, raped her repeatedly while she had her hands tied behind her back and was blindfolded, and subsequently threw her into the street. On 4 January 2007, a soldier of the Congolese armed forces stopped a 13-year-old girl in the Ndosho district of Goma, threw her violently to the ground and raped her. On 17 January, another 13-year-old girl was raped in Nzenga, east of Beni, by three soldiers of the 822nd Battalion of the Congolese armed forces and was subsequently left in the bush.

70. On 21 January 2007, in Katembo, north-west of Uvira, four women were chased, assaulted and raped by soldiers. Eight other cases of rape were reported during the same period in the same area. On 8 January, a man was sexually assaulted by a soldier of the 11th Brigade of the Congolese armed forces in Ihusi, north of Bukavu.

71. On 27 January 2007, in Biruma, North Kivu, a 15-year-old girl on her way home from school was kidnapped and taken by force to the local military camp of the Congolese armed forces, where she was detained for five days during which she was raped daily and repeatedly by two soldiers from the 4th Battalion of the 9th Integrated Brigade under the command of Major Nibiyi. She was released on 2 February on the condition that her family not file a complaint on pain of retaliation and a repetition of the crime.

72. On 5 February 2007, in Mokabi, Equateur Province, a soldier of the Congolese armed forces chased a 13-year-old girl for over two kilometres and raped her.

73. On 1 February 2007, in Ciburi, south-west of Bukavu, a group of soldiers of the 11th Integrated Brigade broke into a home, tied the head of the household to the ceiling, raped his 14-year-old daughter, and looted all the property of the house and neighbouring businesses.

74. Since February 2007, more than four women and a 14-year-old girl were kidnapped by members of the FDLR "Rasta" faction and subjected to sexual slavery.

75. According to several reports, militias of the Front des Nationalistes et Intégrationnistes (FNI) are responsible for the vast majority of incidents of sexual violence committed in the Fataki area, in Ituri, in the course of fighting between members of FNI, loyal to Peter Karim, and the Congolese armed forces. A local hospital recorded 16 incidents of sexual violence in December 2006, 17 incidents in January 2007, and seven during the first week of February 2007.

76. During a military operation against FNI militias, soldiers of the Congolese armed forces systematically looted the village of Linga, south-west of Kpandroma, between 8 and 24 February 2007. Eleven women were raped during the operation.

77. Two girls on their way home from a burial were kidnapped and raped by a corporal of the 2nd Integrated Brigade of the Congolese armed forces at Butuhe in North Kivu on 4 March 2007. The perpetrator was arrested on 6 March and held at the 2nd Integrated Brigade's headquarters in Butembo, but he escaped on the night of 7 to 8 March. This provoked anger among the local people, who rebelled and ransacked police facilities and those of the National Intelligence Agency, as well as the territorial administrator's offices.

78. On the night of 8 to 9 March 2007, two women and a girl were raped by the acting commander of naval forces at Lukolela, Mbandaka. One of the women was raped in the presence of her husband.

79. On 11 March 2007, an 11-year-old girl was raped in the Nyamukubi area, north of Bukavu, by two soldiers of the 14th Integrated Brigade of the Congolese armed forces for the sole reason that her parents refused to allow their home to be occupied by soldiers newly deployed to that area.

80. On 22 March, a 13-year-old girl was raped by a soldier of the 9th Integrated Brigade of the Congolese armed forces in Katongo, south of Uvira.

81. North Kivu province is notable for cases of extreme sexual violence. In the Butembo area alone, a non-governmental office recorded 19 incidents of rape during the month of March, three of which were committed by soldiers of the 2nd Integrated Brigade of the Congolese armed forces. In Rwahwa, in the territory of Beni, five incidents of rape were recorded between 15 and 17 April 2007.

82. On 4 April 2007, in Mvizi, near Matadi, a 3-year-old girl was raped by a police officer. The perpetrator lured the girl into his house with the promise of sweets and raped her. The perpetrator was arrested and sent to Matadi prison.

83. On 27 May 2007, a minor girl from the Mbuji Mayi commune was taken while playing in front of her door by a police officer, who tricked her into his house, raped her, and subsequently threatened her father. On 18 June 2007, in Bandundu town, another minor girl was taken and raped by a soldier who was guarding a petrol station.

84. On 4 June 2007, the Chief of Police of Nyakunde, Ituri, arbitrarily arrested a woman and raped her. In this exceptional case, the perpetrator was arrested by the Military Prosecutor's Department.

85. On 8 June 2007, a woman was kidnapped and raped by a soldier from the 2nd Battalion of the 2nd Integrated Brigade of the Congolese armed forces at Rimba in Ituri. That same day, at Alibha, south of Aru, a pregnant woman was raped by a soldier of the 3rd Battalion of the 1st Integrated Brigade of the Congolese armed forces. The woman aborted following the rape, and the perpetrator was redeployed to another unit in a different area.

86. On 14 June 2007, in Kiseleketi, in Bandundu, three women were raped by police officers in a house they had entered in search of a suspect.

87. On 16 June 2007, a woman was raped by police after she had filed a rape complaint against an officer of the Rapid Intervention Police Force in Kolokoto near Mahagi-Port.

88. On 19 June 2007, in the Mpokolo district of Mbuju Mayi, a woman was raped by soldiers of the Congolese armed forces.

89. During the night of 1 to 2 June 2007, in the commune of Kazamba, Bandundu province, a minor girl was raped by a soldier from the military police of the Congolese armed forces. On 14 June 2007, at Marabo, a soldier from the 2nd Battalion of the 13th Integrated Brigade of the Congolese armed forces raped another minor girl. On 25 June, a minor girl resident in Kayna, North Kivu, was raped by a non-commissioned officer while on the way to the toilet. She was grabbed, taken to a private place, and raped repeatedly. On 11 June 2007, a minor girl was raped by a police officer in Kananga. The victim was a child that the wife of the officer had had by another man and who lived with the said officer.

90. In June 2007, three members of the Congolese police force in Idiofa, Bandundu province, and three civilian prosecutors raped a woman who was five months pregnant in the Madimbi area, where they had gone to arrest the victim's brother. Unable to find the latter, they took the victim instead, subjected her to abuse, beating and injuries, and subsequently raped her. The victim aborted following this brutal treatment.

91. These multiple examples of sexual violence call for greater awareness on the part of the authorities and stronger measures with respect to all forces, beginning with the State forces, since they should be easier to control.

C. Prison situation

92. The prison situation is in the Democratic Republic of the Congo remains precarious and serious. In most parts of the country detention conditions are deplorable and escape is the prisoner's only chance of survival. In prisons and holding cells, the situation is one of overcrowding, outdated facilities, lack of hygiene and of food and medical care, and disregard of proper procedures resulting in illegal detentions.

93. During the night of 31 December 2006 to 1 January 2007, police officers from the mobile operational unit (Groupe mobile d'intervention) in Gbadolite subjected six detainees to cruel and degrading treatment in their holding cell. On the orders of the local commandant, who was drunk on the occasion of Saint Sylvester's Day, the detainees were taken out of their cells and were tied up and beaten. The commander said that this treatment of the detainees was the police officers' "Happy New Year 2007 Café".

94. On the night of 12 to 13 January 2007, five detainees, including a captain of the Congolese armed forces who had been sentenced to 20 years for war crimes, and a detainee who had been convicted of an assassination, escaped from the Bunia central prison by drilling a hole through the prison's perimeter wall.

95. On 23 January 2007, a man was arrested in Kyanzaba, North Kivu for stealing sheet metal. He had previously been arrested, imprisoned and tortured for the same offence on 12 October 2006. Although the family had paid the total amount demanded by the commander, the latter arrested the victim again in January for the same offence. He was taken out of his cell, undressed and beaten all over his body, particularly on the genitals. The beatings left permanent scars.

96. On 9 March 2007, six prisoners escaped from the central prison in Kisangani by climbing over the wall. Five were recaptured.

97. During the night of 10 to 11 March 2007, 15 prisoners including 12 men charged with rape and with causing bodily harm resulting in death, and two soldiers and an agent of the rapid response police force (*police d'intervention rapide* (PIR)) who had been charged with attempted summary executions, escaped from the jail at the police station in Mahagi. Four of the Mahagi prison guards were arrested.

98. On 13 March 2007, the inmates at the central prison in Mbuji-Mayi rebelled against the torture, abuse, inhuman and degrading treatment, extortion of money and harassment inflicted by the guards. According to the guards, they were acting on the instructions of the prison commandant, who was held for questioning.

99. During the night of 24 to 25 March 2007, a detainee committed suicide in the holding cell at the police station in Yuku, South Aru. The chief of police and the guard on duty were arrested.

100. On 17 April 2007, three inmates at the central prison in Mbuji-Mayi died of starvation. The prison commandant stated that the deaths were caused by lack of support from the State. On 28 and 30 April 2007, two other prisoners died of starvation and negligence at Mwene Ditu, in Kasai Oriental.

101. On 8 May 2007, eight prisoners, including two soldiers who were being held on rape charges, escaped from the central prison in Kongolo in north-western Kalemie. During the same period, two prisoners, including a rapist serving a 15-year sentence, died of starvation in the central prison in Mbuji-Mayi.

102. During the night of 10 to 11 May 2007, eight prisoners charged with theft and murder managed to escape from the main prison in Aru, owing to its dilapidated condition.

103. On 13 May 2007, a captain who had been sentenced to five years' imprisonment and ordered to pay US$ 4,000 in damages for rape of a minor, escaped from the central prison in Gamena, Equateur province, with the complicity of the guards. He then broke into the homes of one of the military judges and two lawyers involved in the case, assaulted them and threatened to kill them. He was arrested.

104. According to a report received in May 2007, three inmates died of hunger and malnutrition at the central prison in Tshikapa that month. Approximately twice a month, the 159 inmates held in this prison receive a small ration from a local non-governmental organization which has a modest budget.

105. On 14 May 2007, 252 inmates at the central prison in Kinshasa, who had served one quarter of their sentence and demonstrated exemplary behaviour, were released on parole. This prison, which was designed during colonial times to accommodate 1,500 people, now holds 4,000 inmates and is the most crowded prison in the country. The prisoners were released the day before the visit of the United Nations High Commissioner for Human Rights to that locality.

106. On 27 May 2007, two detainees died in the holding cells of the Congolese national police force, one in Manzasay, near the town of Bandundu, and the other south-west of the town of Kindongo-Mbe.

107. On 22 June 2007, a detainee was tortured to death in the holding cell of the Congolese national police force in Mbuji-Mayi. He had been illegally detained for failing to repay a debt. The same day, four prisoners, including one who had been

sentenced to death for committing murder, escaped from the prison in Beni. Earlier on 17 June 2007, three other detainees had escaped from the holding cell of the Congolese national police force in Mahagi, Ituri.

108. During the night of 24 to 25 June 2007, a prisoner who had been sentenced to death by the Bunia military court for committing murder escaped from the Bunia prison.

109. During the night of 26 to 27 June 2007, a detainee was beaten to death at the police station in Lubilandj, east of Mbuji-Mayi. He had been arbitrarily arrested and detained for having given a ride on his bicycle to a civilian who had not committed any offence.

110. During the night of 30 June 2007, 24 prisoners, including three soldiers sentenced to life imprisonment in the Songo Mboyo mass rape trial, three other soldiers serving 20-year sentences and a detainee alleged to have participated in the mass rape in Lifumba-Waka in March 2006, escaped from the military prison of the Litho Moboti Group (GLM) in Mbandaka.

IV. Justice and impunity

A. Acts of personal vengeance in response to impunity

111. Because of impunity, the population no longer has confidence in the justice system and sometimes retaliates when a serious crime is committed or the perpetrators are caught *in flagrante delicto*.

112. On 20 March 2007, serious incidents occurred at Lisala, north-east of Mbandaka. A number of detainees accused of serious crimes escaped from prison. The population perceived this as impunity and rebelled. Several police officers were injured and public buildings, including the Office of the Public Prosecutor of the Republic and the police station were attacked and looted. The police used excessive force and two civilians, including a 16-year-old boy, were shot and killed while several other persons were seriously injured by projectiles.

113. During the night of 2 to 3 April 2007, a soldier was caught breaking into a shop in the South Mabanga district in Goma. The inhabitants rushed to the scene and stoned him, despite the presence of the police. The soldier died on the way to the hospital.

114. During the night of 14 to 15 June 2007, a man suspected of theft was followed, lynched and burned alive by the inhabitants of the commune of Dibindi, Mbuji-Mayi.

115. On 17 June 2007, an inhabitant of Makoka in the territory of Rutshuru was caught committing armed robbery. He was stoned and burned alive by the population.

116. On 18 June 2007, a demobilized soldier charged with serious crimes was arrested in Kibobero, near the Ugandan border. He was recognized by the inhabitants, who stoned and burned him alive.

117. Mob justice has become a serious problem in the village of Binza, in the territory of Rutshuru, where at least 10 persons have been killed by the civilian population since the beginning of the year.

B. Internal justice: functioning and limitations

118. The smooth functioning of the justice system depends on the working conditions in its institutions and the resources made available to it. The allocation for the justice system in the 2005 and 2006 budgets was insignificant (approximately 0.6 per cent) in view of the myriad problems facing this sector, notably the dilapidated state of infrastructures, the shortage of judges and poor working conditions. Despite these obstacles, considerable progress has been made at various levels and important judgements have been handed down.

119. On 30 January 2007, the Kinshasa/Gombe military court handed down a landmark judgement in the Kutino case. The court determined that it was not competent to rule on charges of criminal conspiracy and attempted murder brought against three civilians (Pastor Kutino and two co-defendants) and referred the case to the civil courts, as they were charged with common law offences.

120. On 17 February 2007, the military court of the Bunia garrison delivered verdicts in two important cases. The first case concerned the massacre at Bavi, during which 32 civilians were executed between August and November 2006; 13 defendants charged with war crimes, murder, looting and rape were given life sentences. The second case concerned the murder of two military observers; seven of the defendants received life sentences, one was sentenced to 20 years and another was sentenced to 10 years. In delivering its verdict, the court applied the provisions of the Rome Statute.

121. According to reports received in February 2007, a combatant from the FDLR "Rasta" group was arrested and handed over to the military authorities. This militiaman was implicated in several crimes committed by the "Rastas", including the murder of a woman in Bulambika on 31 December 2006, several rapes, serial murders, cannibalism and kidnapping followed by torture. He was handed over to the Military Prosecutor's Department.

122. An individual who had allegedly murdered a civilian in cold blood in Rughenda in North Kivu was tried on 6 March 2007, ordered to pay US$ 30,000 in damages and sentenced to death.

123. On 15 March 2007, a member of the naval forces in Bandundu province who had raped an eight-year-old girl on 14 March 2007 in Salonga, the commune of Basoko, was tried and sentenced to 20 years in prison.

124. On 17 May 2007, the military court in Beni, North Kivu province, delivered its verdict in the case of a sergeant of the Department of Border Security charged with having raped a minor on 18 February 2007. The defendant was sentenced to five years' imprisonment and was ordered to pay US$ 2,500 in damages to the victim.

125. On 29 May 2007, the Boma military court, Bas-Congo province, delivered its verdict in the case against seven members of the politico-religious movement Bundu Dia Kongo who had been charged with "rebellion, participation in insurrectionary movements, murder, criminal conspiracy and theft". Two of the defendants were

acquitted, four were sentenced to three years' imprisonment, and the others were sentenced to five years' imprisonment.

126. On 14 May 2007, the Kilwa massacre trial resumed at the Katanga military court in Lubumbashi. The former commander of the 62nd Brigade of the Congolese armed forces and seven senior and junior officers appeared before the court charged with war crimes, crimes against humanity, arbitrary detentions and arrests, murder and looting during an offensive against an alleged secessionist movement that had occupied the town of Kilwa; more than 73 persons were killed during the offensive, which began on 14 October 2004. On 28 June 2007, the Katanga military court ruled that no massacre had taken place and acquitted all the defendants. An investigation conducted by MONUC in October 2004, however, had documented cases of summary executions, rape, torture and looting by Congolese armed forces led at the time by Colonel Adémar, Commander of the 62nd Brigade.

127. On 5 June 2007, the former leader of the Mayi-Mayi militia, Kyungu Mutanga, alias "Gédéon", appeared before the Kipushi military court in Katanga province. He had been wanted for his crimes for some time. He surrendered to MONUC on 12 May 2006 and was subsequently charged with crimes against humanity, war crimes, cannibalism, looting, terrorism and acts of rebellion committed between October 2003 and May 2006.

128. On 15 June 2007, the Mbuji-Mayi military court sentenced 22 persons for criminal conspiracy, illegal possession of military weapons and ammunition, rape and armed robbery. Fifteen defendants were sentenced to death, five were acquitted, and the others were given prison sentences ranging from two to five years.

129. On 23 June 2007, the Gemena military court delivered its verdict in the case of two police officers charged with murdering a 13-year-old child in Gemena, north-east of Mbandaka, during a clash between the mobile operational unit and the local population on 18 June. One of the defendants was sentenced to death and ordered to pay US$ 10,000 to the family of the victim, jointly with the State.

130. The occasional courageous trial or judgement is not commensurate with the scale and gravity of the crimes. The high crime rate in the Democratic Republic of the Congo, the disturbing number of crimes and offences and the prevailing impunity — which encourages repeat offences — compound the impotence of the national courts. The judiciary suffers from a severe lack of financial and human resources and does not have the authority to address the serious crimes committed by warlords or high-ranking civil servants. Given the impotence of the courts, it is necessary to use other legal mechanisms, in particular the International Criminal Court. The independent expert recommends the establishment of a special international criminal tribunal for the Democratic Republic of the Congo.

C. The International Criminal Court and the campaign against impunity

131. On 13 November 2006, the International Criminal Court in The Hague began preliminary hearings in the trial of the former militia leader in the Democratic Republic of the Congo, Thomas Lubanga, whose atrocities committed in the district of Ituri since 1999 had resulted in the deaths of at least 6,000 people and the

displacement of several hundred thousand. He has been charged with recruiting and conscripting child soldiers into his militia.

132. However, the International Criminal Court alone cannot try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since the entry into force of the Rome Statute (1 July 2002).

133. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of crimes covered by the Rome Statute committed prior to 1 July 2002, but also the administration of justice and an all-out campaign against impunity.

D. Establishment of a special international criminal tribunal or joint criminal chambers for the Democratic Republic of the Congo

134. In order to combat impunity, which must be done if there is to be peace in the country and further crimes are to be prevented, the independent expert recommends the creation of a special international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

135. Certain measures could be taken to reduce the costs of a special tribunal. It could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses. The host State could provide premises and defray certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for appointing lawyers.

136. Should it prove impossible to create an international tribunal, bearing in mind that it is essential to combat impunity and extremely serious crimes, consideration could be given to establishing joint criminal chambers attached to the appeal courts, with the right of appeal (preliminary and final appeal) to a chamber that is competent to hear it and which would come under the Supreme Court:

(a) Chambers of first instance could be attached to five appeal courts, one in Kinshasa and the other four strategically located throughout the country, taking into account the size of the country and distances;

(b) Chambers of first instance could be composed of three judges (two nationals and one non-national, or vice versa);

(c) The preliminary or final appeal court could be composed of three judges (two non-nationals and one national, or vice versa);

(d) The Public Prosecutor's Office would be organized and would function according to the same criteria.

137. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of human rights and international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the

Democratic Republic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

138. Such an institution would be more flexible and less costly should the creation of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current poverty.

139. These joint criminal chambers could also contribute to restoring the country's judicial system in terms of staff, training, equipment and living and working conditions.

V. Recommendations

140. **The independent expert recommends to all the actors in the political and national life of the Democratic Republic of the Congo that they should:**

(a) Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration and national unity;

(b) Recognize the need for all political actors and the media to foster the culture of dialogue, to reject violence and ethnic hatred, to accept democracy and the verdict of the ballot box, and to seek remedies, when necessary, through the law.

141. **The independent expert recommends to the Government of the Democratic Republic of the Congo that it should:**

(a) Take all necessary measures to affirm and consolidate the State's authority over the entire territory and to foster rapprochement and a spirit of dialogue among the political actors;

(b) Implement a national "vetting" (confirmation) process by suspending members of the armed forces of the Democratic Republic of the Congo, the national police force or the National Intelligence Agency accused of human rights violations, with a view to restoring the confidence of the people in their institutions;

(c) Provide all necessary support to the mapping team, in order to draw up an objective map of the human rights violations committed between March 1993 and June 2003;

(d) Ensure the effective application, in accordance with the Constitution of 18 February 2006, of the principle of clear separation between *intuitu personae* and *intuitu materiae* areas of jurisdiction between civilian and military courts in order to respect the law on the administration of justice;

(e) Ensure the effective integration, reunification, reinforcement and equipment of the army and police;

(f) Improve the currently precarious and inadequate physical, intellectual and material conditions of the institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity;

(g) Combat the trafficking and illegal exploitation of natural resources;

(h) Combat all the crimes that continue to be committed, particularly sexual violence against women and children;

(i) Combat the continuing use of children in armed conflicts, and combat militias and privately armed groups and prevent them from rearming;

(j) Combat the impunity that serves to perpetuate violations of human rights and of international humanitarian law;

(k) Work to enhance the status of women, to protect them and help them to fulfil their potential, and promote the rights of the child.

142. **The independent expert recommends to the newly elected Parliament that it should:**

(a) Adopt laws essential for the administration of justice and for other areas of national life, in particular:

(i) A law on the establishment and functioning of the Supreme Council of the Judiciary;

(ii) A law providing for the application of the Rome Statute of the International Criminal Court;

(iii) A law on the protection of persons living with HIV;

(iv) An organic law on the establishment and functioning of the new national human rights institution;

(v) An organic law on the organization and functioning of the national police;

(vi) A law criminalizing torture;

(vii) A law reforming prison administration;

(viii) A law on the integration of the army and the reform of the security forces;

(ix) The harmonization of the provisions of certain legal instruments, particularly certain provisions of the Code of Military Justice, with the requirements of the Constitution.

143. **At the international level, the independent expert recommends that:**

(a) The international community should:

(i) Support the new institutions arising out of the elections in order to permit the establishment of the rule of law, a culture of lasting peace, and democracy;

(ii) Support the restructuring, integration, recruitment, training and equipment of the army, the security forces and the police;

(iii) Support the renewal of the mandate of the United Nations Mission in the Democratic Republic of the Congo to enable it to provide broader and more effective monitoring and support to the new Government, the army and the national police force, so that they may meet the various challenges

posed by the constant crime and unrest within the country, particularly on its eastern borders;

(iv) **Support the human rights bodies operating in the Democratic Republic of the Congo, namely, the Office of the High Commissioner for Human Rights and the Human Rights Division of MONUC, in implementing their programmes and activities for the promotion and protection of human rights;**

(v) **Provide all necessary assistance to enable the independent expert to fulfil his complex mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate.**

(b) **The Human Rights Council, the General Assembly, the Security Council and the Economic and Social Council should, given the dilapidated state of the judicial system and the dysfunctional administration of justice in the Democratic Republic of the Congo, as well as the scale and gravity of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002 and/or all crimes reported.**